

**MINUTES OF A REGULAR MEETING
OF THE
BOARD OF TRUSTEES
OF THE
TOWN OF BUENA VISTA, COLORADO**

May 26, 2009

WORK SESSION

A work session convened at 5:58 PM at the Buena Vista Community Center, Pinon Room, 715 E. Main Street, Buena Vista, Colorado to discuss the supplemental budget amendments and proposed personnel policy changes. Those present were Mayor Russell, Trustees Joel Benson, Mark Boston, Norm Nyberg, Brett Mitchell, Robert Flint, Town Administrator Sue Boyd, Town Treasurer Christine DeChristopher and Town Clerk Diane Spomer.

Town Treasurer DeChristopher led the work session by presenting information on the budget status report through April 30, 2009, noted the Town is "on track", sales tax is hanging in there for the year and felt the Town can be cautiously optimistic.

A lengthy discussion followed on the operating revenues for the airport fund; general fund expenditures and revenues for 2009; the supplemental budget with items already approved by the Board and those adjustments based on YTD information with a May budget increase of \$19,034.50 inclusive of all funds (includes \$4800 for survey work at the airport). Items to be discussed at a later time: County wide energy plan with \$2500 cost to BV; new server, upgraded accounting software with utility billing and new furniture at Town Hall for \$58,000 (no one was opposed); \$6200 was budgeted for gateway signs and propose utilizing the funds for design costs and way-finding signs. Personnel policy changes will be discussed during Trustee/Staff Interaction.

The work session concluded at 6:59 PM.

CALL TO ORDER

A Regular meeting of the Board of Trustees was called to order at 7:04 PM, Tuesday, May 26, 2009, at the Buena Vista Community Center, Pinon Room, 715 E. Main Street, Buena Vista, Colorado by Mayor Cara Russell. Present were Trustees Robert Flint, Brett Mitchell, Mark Boston, Norm Nyberg, Joel Benson, Town Administrator Sue Boyd, Town Attorney Lee Phillips, Airport Manager Bob Johnson, Town Treasurer Christine DeChristopher and Town Clerk Diane Spomer. Trustee Baker was absent.

ROLL CALL

Town Clerk Spomer proceeded with the roll call and declared a quorum.

PLEDGE OF ALLEGIANCE

Mayor Russell led in the Pledge of Allegiance.

AGENDA ADOPTION

Town Clerk Spomer requested items D & E under New Business be renumbered to C & D.

Trustee Benson asked that Item B under New Business be moved to Item D.

Motion #1 by Trustee Flint, seconded by Trustee Boston, to adopt the agenda as amended. Motion carried.

CONSENT AGENDA

- A. **Minutes**
 - 1. Regular Meeting – May 12, 2009
- B. **Advisory Board Minutes**
 - 1. Beautification Advisory Board

2. Airport Board
- C. Should the Board approve adoption of Resolution #37, Series 2009, entitled “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO GRANTING PRELIMINARY PLAT APPROVAL FOR THE PUD ZONING AND MAJOR SUBDIVISION FOR THE COTTAGE GLEN PLANNED UNIT DEVELOPMENT**”?

Trustee Benson referenced Motion #3 on page 32 and asked if the word “asphalt” should be included in the motion. Trustee Mitchell stated it was approved with asphalt.

Motion #2 by Trustee Benson, seconded by Trustee Boston, to approve the Consent Agenda as presented. Motion carried.

PUBLIC COMMENT

No comments were received.

OLD BUSINESS

DISCUSSION OF THE MAYOR’S REQUEST FOR REIMBURSEMENT

Mayor Russell turned the Chair duties over to Mayor Pro Tem Flint for this discussion.

Mayor Russell presented points for consideration: in seeking to remove her from office last fall Council committed a tort against her but did not wipe out her wrong; she has asked for payment in full for her attorney fees for defense in the case; reminded Council and the citizens she was fighting a wrongful termination case with a deadline; by statute she can be removed for misconduct or malfeasance and has not been tried or charged with those charges; she exercised her right of free speech and cannot be charged for misconduct or malfeasance in so doing; Roberts Rules of Order states “it is the duty of the chair to facilitate the debate and not take an overly active part in it until after the pending question is disposed of”; Council used an elephant gun when a discussion would have sufficed; Trustee Mitchell started the process to “prove a point” and Cara felt he misinformed other Council members; Council asked her to give up all her consideration when their offer was made which was the right to sue; spent all her own funds on the retainer; in asking her to pay the full amount of attorney fees she is currently paying her Mayor’s salary to retain her position and felt it is a deterrent to future candidates; noted the emotional and mental strain on her and her family and asked Council to pay the attorney fees at the reduced rate.

The Trustees expressed the following thoughts:

Trustee Mitchell: he did not mislead anyone; every position has a value, noted the Mayor’s salary of \$100 per month and it was not prudent for her to spend \$13,000; cannot ask the Town to pay the fees; her letter shows poor judgment and bad ethics in asking Council to pay the fees or she will personally sue them and felt it borders on extortion.

Trustee Nyberg: didn’t feel the Mayor did anything wrong and it needs to end, pay the bill, the recall is over, we need to get back on the same page and take care of what needs to be taken care of.

Trustee Boston: we were rejected for the \$5000 because we expected her to sign a waiver or right to sue; no matter what we say we will be faced with a lawsuit and didn’t feel comfortable spending public funds to defend himself; felt she could have waited for the setting of a public hearing before hiring an attorney.

Trustee Flint asked if the original offer of \$5000 is in the supplemental budget and noted the costs of a recall election as a reaction to the recall petition and wondered how to end this. Christine stated the funds are in the budget.

Trustee Benson: the “rule of necessity” where there is a threat of a lawsuit of five trustees and they could all excuse themselves but out of the rule they can participate in the discussion; didn’t feel he could give more tax payer funds because of a threat of a personal lawsuit and this has to end.

Mayor Russell provided the following comments in response: there were no precedents in seeking her removal and did not have options in hiring an attorney to deal with this matter; does not want to sue the Trustees; out of consideration for the citizens wants to settle "out of court" and move on; requested the cost of recovery of her attorney fees; thought the \$5000 was already sent to her attorney but found out she needed to sign paperwork first; without the threat of a recall thought Council would be in the same mind as her of "moving on"; did not "threaten a suit"; all she has left to give up in this discussion is a lawsuit and requested payment of attorney fees and that everyone move on to the business of the Town.

Discussion followed on the attorney came down in his fees some but Council came to a half-way point; the employees gave up their 3% cost of living for 6 months because of economic times and asking them to give that break and give of themselves and then paying funds to pay for the Mayor's request.

Motion #3 by Trustee Nyberg, seconded by Trustee Benson, to pay the \$9211.07 and get this behind us. Trustee Nyberg expressed this should never have been started, was a bad move and has been chaos with this hanging over us. Roll call vote: Mitchell-nay, Benson-nay, Flint-nay, Boston-nay Nyberg-aye. Motion failed.

Motion #4 by Trustee Boston, seconded by Trustee Mitchell, to reject the Mayor's request for reimbursement. Trustee Boston clarified by saying it would be for a zero reimbursement. Trustee Benson stated that with the perception of a threat of a personal lawsuit felt he could not change his original offer. Roll call vote: Boston-aye, Benson-nay, Mitchell-aye, Flint-aye, Nyberg-nay. Motion carried.

NEW BUSINESS

SHOULD THE BOARD APPROVE A REQUEST FOR DEFERRAL OF "CASH IN LIEU" FEES FOR THE HEIMAN SUBDIVISION

Administrator Boyd noted Darrell & Leslie Heiman received approval for an Intermediate Subdivision located off Gregg Drive on February 26, 2008, in researching a request we realized this was never fully executed and the process did not move forward. The applicants are asking for a deferral on the fees in lieu of the curb, gutter and sidewalk provision until such a time as it is developed in that area. This is a four part recommendation: proceed to approve a Resolution executing an Intermediate Subdivision Plat previously approved with conditions along with a Development Agreement; the applicant was required at that time to get a Special Use Permit to allow unscreened storage to proceed. The deferral was not discussed and the rest of the request is to move forward to execute the agreement as approved in February.

Discussion followed on security to guarantee that it be done. Lee noted whatever Council requires, the Code does not specify cash in lieu and deferring full payment.

Leslie Heiman, 653 Gregg Drive, expressed concern with the property does not have potential right now, the subdivision was originally the same as Comfort Gas who did a letter of credit stating when the improvements were done in the area they would come forward and do the improvements. Leslie noted they are off the beaten path and suggested the possibility of doing a letter of credit attached to their real estate. Attorney Phillips noted security is secured by cash, not real estate and does not run with the land.

Leslie stated their request has seen three Administrators and no one could explain how long the money would be held, where will the money be held, what happens to the money if not used in a certain amount of time and that was part of the problem. They feel they are being held back and want to move the commercial store front in Town but keep the cars stored on Gregg Drive and don't have a lot of money and resources.

Discussion followed on there is no curb, gutter and sidewalk on Gregg Drive, subordinate the parcel to the Town, secure vs. non-secure, why it was an Intermediate Subdivision originally; a similar approval done for S. Main, code says "to pay the fee" and to defer it is an exception to the code; doing a contract

for the deferral and having it tied to the property; doing a second lien that is tied to the property if sold. Staff will come back with a negotiation solution and bring a resolution to the next meeting. DJ asked for expediency as they are looking at another building.

Should the Board approve adoption of Resolution #40, Series 2009, entitled "A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA APROVING AN AGREEMENT FOR ARCHITECTURAL SERVICES BETWEEN THE TOWN OF BUENA VISTA AND RTA ARCHITECTS FOR THE CENTRAL COLORADO REGIONAL AIRPORT"?

Sue Boyd outlined that RTA is the firm we engaged for terminal renovation at the airport, the Phase I contract was for a preliminary assessment that has been completed; Phase II was contemplated for design through construction but there will be options that will be brought back for future decisions and Phase II is for the schematic design and cost estimation to support a final decision for what portions of the renovation will be done at this time; this contract is not to exceed \$10,239. Attorney Phillips wrote the contract and recommended approval.

Motion #5 by Trustee Benson, seconded by Trustee Flint, to approve resolution #40, Series 2009. Roll call vote: Mitchell-aye, Benson-aye, Flint-aye, Nyberg-aye, Boston-aye, Motion carried.

Should the Board approve adoption of Resolution #41, Series 2009, entitled "A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA AUTHORIZING THE EXECUTION OF A GRANT CONTRACT BETWEEN THE TOWN OF BUENA VISTA AND THE DEPARTMENT OF LOCAL AFFAIRS FOR A FEASIBILITY STUDY FOR TOWN HALL AND THE POLICE DEPARTMENT WITH A TOWN MATCH OF \$5,000"?

Sue stated this formalizes a decision on approval of a \$5,000 match for the \$5000 DOLA grant, they provided us with a standard energy and mineral impact grant contract to complete the feasibility study for Town Hall and Police Department and we have until November 30, 2010 to complete this phase. The project budget is \$410,000 with \$5,000 matching funds and this contract will allow us to proceed.

Discussion held on the feasibility will entertain the needs assessment for both locations and then look at options which may include relocating.

Motion #6 by Trustee Flint, seconded by Trustee Mitchell, to approve Resolution #41, Series 2009. Roll call vote: Nyberg-aye, Flint-aye, Boston-aye, Benson-aye, Mitchell-aye. Motion carried.

Sue advised the next step is for an RFP to be put together and accept proposals (6-8 weeks).

PUBLIC HEARING - to consider a supplemental appropriation of revenue and expenses to the 2009 Budget.

Christine DeChristopher stated this supplemental budget is to capture changes discussed by the Board based on requests that have come before them and to capture changes occurring operationally this year i.e. positions that were vacant and some delayed in hiring; some things at the time of the budget were just estimates i.e. health insurance and we now have actual numbers. The total adjustment is \$12,952 additional to the General Fund coming from reserves, \$7600 for the Airport Fund and reducing the Water Fund due to a health insurance decrease.

Mayor Russell opened the public comment portion of the hearing at 8:00 PM with no comments received and closed the comment portion of the hearing.

Christine noted under the Airport Fund, Operating Expenditures should be increased \$4800 for the surveying of the airport for a total of \$7,682 with a total Operating Expenditure of \$468,882; the total amendment is \$7,682 reducing the fund balance to \$215,867. A brief discussion followed.

- Should the Board approve adoption of Resolution #38, Series 2009, entitled “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO, ADOPTING AN AMENDED AND SUPPLEMENTAL BUDGET FOR THE TOWN OF BUENA VISTA, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2009 AND ENDING ON THE LAST DAY OF DECEMBER 2009**”?

Motion #7 by Trustee Benson, seconded by Trustee Flint, to approve Resolution #38, Series 2009 with the addition of \$4800 under the Airport Fund. Roll call vote: Nyberg-aye, Mitchell-aye, Flint-aye, Boston-aye, Benson-aye. Motion carried.

- Should the Board approve adoption of Resolution #39, Series 2009, entitled “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO, ADOPTING SUPPLEMENTAL APPROPRIATIONS FOR THE TOWN OF BUENA VISTA, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2009 AND ENDING ON THE LAST DAY OF DECEMBER 2009**”?

A brief discussion was held on one resolution budgets the money and the other authorizes expenditures.

Motion #8 by Trustee Benson, seconded by Trustee Flint, to approve Resolution #39, Series 2009 with the addition of \$4800 under operating expenditures for the Airport Fund. Roll call vote: Mitchell-aye, Boston-aye, Flint-aye, Benson-aye, Nyberg-aye. Motion carried.

A recess was taken from 8:06 PM to 8:10 PM

STAFF REPORTS **TOWN ADMINISTRATOR**

Town Administrator Boyd had the following items to cover:

- ACA alerted us that they may request to extend the completion on E. Main for one week, we don't have the details but the request may be coming and there will be some street closures tied to it. Trustee Benson asked if there was a way to do some of the final crosswalks in the fall. Christine noted we will have to pay mobilization again and then won't know how much money there is for furniture. ACA suggested the week of June 8 for a ribbon cutting ceremony. Discussion held on a date i.e. the Saturday following. Staff will work on it and send out an e-mail to Council.
- Landscaping on Hwy. 24 came up at the last meeting - Roy met with Evelyn Baker and think they worked it out. Trustee Flint spoke with Roy and the stated the strip they discussed is CDOT land and they had to be careful on what they did with it - couldn't change the landscaping. Mayor Russell asked if there was any check list before we make final payments to contractors. Sue noted it was not built into the contract but was supposed to be done by the Town. Christine stated it was not a contract issue; we pay the engineering firm to verify that everything that was to be done got done and an add is placed in the paper before final payment is made.
- We have received an application for two off-premise signs for S. Main proposed on Town property and are working with Jed Selby - an agreement may come before you at the next meeting.
- We interviewed five finalists for Town Engineer and will bring two back for a second interview to make a final decision.
- A work session is scheduled at 6 PM for the June 9 meeting to discuss off-street parking; a 6:30 PM Board of Adjustment meeting is set to appeal a decision for a building permit for the Humane Society. Attorney Phillips stated the Board of Adjustment meetings you do not typically do and will have a script for the Mayor to open the meeting and set the rules.
- We have had some Advisory Boards wanting to talk to the Board about their priorities before the budget planning process - a Work Session with all reports is scheduled at 6 PM before the June 23 meeting. They want the Board to recognize their budget items before they proceed for 2010.

Consensus was for June 23. Mayor Russell suggested meeting with P&Z on the Comp Plan to move forward with recommendations. Will be scheduled after the Planner starts.

- We are proposing a Work Session on July 14 before the meeting to firm up the budget.
- Spoke with Reed McCullough about a study session for the Chaffee Housing Authority and invite the public on either July 28, Aug 11 or 25. Consensus was further out.
- Trustee Benson referenced a discussion for a potential pre-budget date and suggested waiting until late September for a retreat.
- Attorney Phillips noted a memo that was prepared for financing municipal parking facilities for the Study Session on June 9.

PUBLIC WORKS:

- Trustee Nyberg asked about a statement on page 140 on problems with citizens not obeying the closures and defacing wet concrete. Sue noted she talked with Jimmy and some things were discovered after the fact. A short discussion followed.
- Trustee Benson asked about the pizometer readings. Sue stated they are trying to keep up with them but did not have specifics.
- Mayor Russell asked if the seasonal positions were filled. Christine stated the last one started today.
- Trustee Benson noticed a new tap on Grouse Street. Trustee Boston advised that some people have bought existing homes and lots are being advertised for sale; two contractors are working on completing two of the homes.
- Trustee Flint noted a well drilling rig behind the America Legion. Trustee Nyberg stated they set it up and sometimes they do that to work on it or relive stresses on the equipment.

TRUSTEE/STAFF INTERACTION

- **Personnel Policy:** Christine DeChristopher referenced her memo outlining new personnel changes, stated the personnel manual is 9 years old, there are new laws and revisions need to be made to the entire manual; staff wants to move forward with the payroll system and changing pay dates effective July 1 and will give employees notice early i.e. 26 pay periods vs. 24. Changes to the personnel manual include pay period and the way pay is done (will be discussed at the June 23 meeting); the rest of the manual will be worked on after that. Discussion held on FLSA and work period; making the work period and pay period work together; a calendar will be sent out to all employees showing new pay periods and a calculation for what new pay will be; pay plan should reflect exempt and non-exempt positions; difference between exempt and non-exempt.
- Mayor Russell provided a hand-out with some action items discussed at the work session with the Chamber and stated a follow-up meeting is scheduled for September 16; asked Mayor Pro Tem Flint to co-chair the Home Rule Committee; Cara will attend the CML Conference and will schedule a meeting the week of June 22 with those who want to be involved with discussions on Home Rule.
- Trustee Benson referenced a letter Council received about temporary vendors and led the discussion by noting he spoke with the owner of K's on Thursday about her concerns for vendors situated by BV Drug down to K's on their appearance and potential and one vendor did not have a sales tax license. They discussed fairness in Town and Lois wanted to "pull the plug" on the vendor but Joel wanted to discuss the vendors and the process.

Sue Boyd outlined the process from the code which requires a Temporary Use Permit and noted they cannot exceed 6 months and they need to apply for a business license also. Council was given copies of the applications that have been issued. Town Clerk Spomer reiterated the Temp. Use process and that each vendor needs a business license also, gave an overview of a conversation with the owner of K's and the subject vendor who had "applied for a sales tax license" through D.O.R. and how the sales tax reporting process works in relation to the Treasurer receiving reports. Trustee Boston noted a vendor who has followed the process and has been harassed and videoed by a business owner and did not know how to deal with the situation. Discussion followed on limiting items they sell; restricting more than one vendor per lot; making sure carts are not an eye-soar and possibly changing the code; allowing everyone to make a living

if they have followed the process; talking to the business owner that is harassing the vendors; once a sales tax license has been applied for they are considered to have a sales tax license and the Dept. of Revenue follows up; putting together a "vendor cart code"; Council requested that staff bring code changes back before the next season.

- Mayor Russell requested the addition of a discussion of code regulations on garage sales at the next meeting-homeowners are doing them every two weeks and appear to be running a business.
- Trustee Boston was happy to see lots of people in Town for Paddle Fest but a question came up on policing the festivals, on Sunday cars parked on both sides of the street at the green area so cars couldn't get through, campers were set up, because there were no port-o-lets someone noticed three people defecate on public property and asked how we regulate the festivals. Sue suggested if we had a special event code it would create a different level of expectation that would go above and beyond what a park use permit would allow. Discussion held on implementing a special event code, safety issues, port-o-lets that were to be placed at S. Main and the time frame on getting them down there. Sue will research.
- Trustee Benson talked to individuals stranded at the airport, and their perspective is it is a great airport but there is a lot of drama that goes on, we have a great airport and staff but need to tighten things up. Mayor Russell noted these items are agendized for the Airport Board meeting Monday night. Joel stated he is hopeful to look at an access plan for Hwy. 24 soon and asked about progress on water rights. Sue Boyd advised she is waiting for the Planner to get onboard. Joel asked about the Boulder Park - Christine noted it is delayed with Roy's absence, the site preparation is to be done by town staff, the boulders will come next week but we do not have the site ready. Roy is working 4 hours per day now (1/2 time) and is a few months from full-time.
- Trustee Benson received an e-mail from an individual who was encouraging allowing food and alcohol at the Community Center. Sue received it today and stated a proposal can be put together to bring back for discussion. Christine offered that it is the idea of having food & alcohol available at the Community Center for fund-raising events by non-profits and there is no facility in Buena Vista that will hold a lot of people. Diane Spomer noted she received two requests and discussed it with Sue - staff is planning on adding this item for discussion at the next meeting. Discussion followed. A suggestion was made to add high-speed internet access at the Community Center also; offering high-speed service at Town Hall, the Police Station and all Town buildings so people walking around Town can have service.
- Trustee Flint received a letter and e-mail regarding off road vehicles and found that the County turned them down in 2005 for use on CR 371. Discussion held. This is agendized for June 9 as a discussion and staff will bring more information. Discussion continued on the County giving permission first and waiting to get that response before proceeding, getting public input, drafting a letter to the requestors. Council wanted to wait for a response from the County.
- Trustee Flint asked about the vehicles for sale on Hwy. 24 and if they are permitted with the business. Sue will research.

ADJOURNMENT

Motion #9 by Trustee Benson, seconded by Trustee Mitchell, noting that there being no further business to come before the Board declared that the meeting be adjourned at 9:33 PM. Motion carried.

Respectfully submitted:

Mayor, Cara Russell

Town Clerk, Diane Spomer